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OFFICE OF PETITIONS

In re Application of
Nowak et al.
Application No. 09/936,469
Filed: 371 date 2/13/2002 (IA date
3/11/2000)

: DECISION DISMISSING PTA
: APPLICATION

This decision is in response to applicant's RESPONSE FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(b) timely¹ filed on May 6, 2005 requesting that the Office adjust the PTA calculation at the time of the mailing of the notice of allowance from a determination of zero (0) days to a determination of one hundred and forty days.

Applicants' application for PTA is **DISMISSED**.

Applicants assert that the Office erred in failing to provide applicants with an Office delay for failing to provide a notice under 35 U.S.C. 132 or 35 U.S.C. 151 within 14 months of the date the requirements of 371 were fulfilled. Applicants assert that the Office missed such period by a period of 340 days. Applicants further acknowledge a delay on their part by a period of 200 days for the abandonment of the application. Accordingly, applicants assert that the correct amount of PTA at the time of the mailing of the notice of allowance is 140 days.

Applicants arguments are not persuasive because the applicants are ineligible for the PTA grounds under 37 CFR 1.702 and 1.703. In order to be eligible for PTA the application must be filed on/after May 29, 2000. In an application filed under 37 CFR 371 the actual filing date of the application is the international filing date. In this particular application the international filing date of the application is March 11, 2000. Accordingly, applicants are ineligible for PTA. Since the application was filed between June 8, 1995 and May 29, 2000 applicants can earn additional extension time if the Office fails to meet the requirements of 37 CFR 1.701. However, the Office did not fail to meet any of the grounds enumerated in 37 CFR 1.701 and accordingly the zero days of PTA is accurate.

After the mailing of this decision, this application will be forwarded to the Office of Patent Publication for a prompt issuance of the patent.

¹Issue fee paid on May 06, 2005

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The office has assessed the \$200.00 fee associated with this application. No additional fees are required by the Office

Any questions concerning this decision should be directed to Kery A. Fries, Senior Legal Advisor, at 571-272-7757.

Kery Fries

Kery Fries
Senior Legal Advisor
Office of Patent Legal Administration
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for Patent Examination Policy